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5 BARRY, GARDNER & KINCANNON

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10 Attorneys for Defendants

11 BAYVIEW LOAN SERVICING, LLC,

12 AKA BAYVIEW AND MARILYN CORO

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14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
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PAMELA CHYBA

Plaintiff,

vs.

BAYVIEW LOAN SERVICING,
LLC, AKA BAYVIEW; DAVID
ERTEL; AND MARILYN CORO,

Defendants.

CASE NO. 3:14-cv-01415-BEN-BLM

DECLARATION OF CATHY KNECHT
ROBINSON IN SUPPORT OF
DEFENDANTS BAYVIEW LOAN
SERVICING, LLC AND MARILYN
CORO'S MOTION FOR SANCTIONS
PURSUANT TO F.R.C.P 37(d), AND
CERTIFICATION OF MEET AND
CONFER ATTEMPTS

Judge: Roger T. Benitez

Date:

Time: 10:30 a.m.

Room: 5A

DECLARATION OF CATHY KNECHT ROBINSON

I, Cathy Knecht Robinson, declare as follows:

1. I am an attorney at law, duly licensed to practice before all of the courts of the State of California. I am Of Counsel to the law firm of Barry, Gardner & Kincannon, A Professional Corporation, attorneys of record for Defendants BAYVIEW LOAN SERVICING, LLC aka BAYVIEW ("Bayview") and MARILYN CORO ("Coro") (collectively "Defendants"). I have personal knowledge of all matters stated herein, and if called as a witness, I could and would competently testify thereto.

2. On April 6, 2016 I requested that Plaintiff Pamela Chyba ("Plaintiff" and/or "Chyba") provide me with her availability for deposition, to which she failed to respond.

3. On April 8, 2016, I again requested that Plaintiff provide me with her availability for deposition, to which she failed to respond.

4. Having received no response from Plaintiff, I noticed Plaintiff's deposition for April 22, 2016.

5. I requested confirmation from Plaintiff of whether April 22, 2016 would work for her deposition, and on April 13, 2016 attempted to meet and confer with Plaintiff regarding her deposition. Plaintiff did not respond to my efforts, other than to tell me that April 22 did not work for her because she had discovery due in another case on that day.

6. On April 13, 2016, I asked Plaintiff whether April 27 or April 28 would work better for her deposition, rather than April 22, to which she did not respond.

7. On April 14, 2016, I offered to take Plaintiff's deposition via videoconferencing, if that was easier for her if she was out of the state for work, and tried to meet and confer with Plaintiff further in regard to her deposition. Plaintiff did not respond.

8. Plaintiff did not appear for her deposition on April 22, 2016.

1 9. On May 4, 2016, the Court entered its ruling on the Defendants' Motion
2 for Summary Judgment ("MSJ"), wherein the Court granted Bayview's MSJ as to all
3 but Plaintiff's TCPA claim. The Court provided the parties with additional time for
4 further discovery and briefing in relation to the TCPA claim. (Doc. 95).

5 10. Thereafter, on May 10, 2016, my office served Plaintiff (via email and
6 mail) with notice of her deposition, with the deposition noticed for May 23, 2016.

7 11. On May 18, 2016, I received an email from Plaintiff indicating that she
8 would not appear at her deposition on May 23, 2016 because she did not receive
9 proper notice of the deposition. I attempted to meet and confer with her, once again,
10 to no avail.

11 12. To date, Plaintiff has never given me a date that she would appear at her
12 deposition, despite multiple attempts to meet and confer with her, nor has she
13 appeared at her properly noticed depositions on April 22, 2016 or May 23, 2016.

14 13. Attached hereto as Exhibits "A" and "B" are true and correct copies of
15 my email communications with Plaintiff in relation to my attempts to meet and confer
16 with her regarding her deposition.

17 14. Due to the foregoing, it is respectfully requested that Plaintiff be
18 sanctioned for her failure to appear at her deposition, pursuant to Rule 37(d)(3) and
19 37(b)(2).

20 15. Bayview has incurred \$1,500.00 in attorney fees in connection with the
21 instant Motion for Sanctions.

22 16. I have attempted to meet and confer with Plaintiff in relation to her
23 deposition, to no avail. Thus, it is apparent that court intervention is necessary.

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed this 6th day of June, 2016, at Carlsbad, California.

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6 _____
7 Cathy Knecht Robinson, Esq.
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EXHIBIT A

[REDACTED]

From: Cathy Knecht [mailto:cathy.knecht@sbgk.com]
Sent: Thursday, April 14, 2016 9:27 AM
To: Discover The Fraud <discoverthefraud@gmail.com>
Subject: RE: Chyba v. Bayview Loan Servicing hearing continuance

Pamela: If you are not in CA on 4/22, we can do your deposition via video conferencing; otherwise I propose we take your deposition on the morning of 4/28 if the matter is not resolved at the MSC on 4/27. That way, if we resolve the matter, we can cancel the deposition and not incur the time/costs associated therewith, which may be better suited for settlement or otherwise. Please confirm if you agree to video conferencing on 4/22, or if you will agree to do the deposition on 4/28.

From: Cathy Knecht [mailto:cathy.knecht@sbgk.com]
Sent: Wednesday, April 13, 2016 9:13 PM
To: Discover The Fraud <discoverthefraud@gmail.com>
Cc: Cathy Robinson <cathy.robinson@sbgk.com>
Subject: Re: Chyba v. Bayview Loan Servicing hearing continuance

If we keep the MSC on for 4/27, would that morning (4/27) or 4/28 work for you for your deposition?

Sent from my iPhone

On Apr 13, 2016, at 7:49 PM, Discover The Fraud <discoverthefraud@gmail.com> wrote:

Cathy,
Wednesdays are my busiest days and I have a conference call shortly. I am planning on all the currently scheduled dates to stay as they are. No, the deposition date is not going work for me. I have another case in which documents are due on that day in addition to my already outstanding obligations, and the hearing which will further take an additional two days out of my week I will have to travel for. I can confer tomorrow at 1pm.

Pamela

On Wed, Apr 13, 2016 at 7:30 AM, Cathy Knecht <cathy.knecht@sbgk.com> wrote:

As a follow up to my email below, 4/27 still works for my client for the MSC. Does that day work for you?

From: Cathy Knecht [mailto:cathy.knecht@sbgk.com]
Sent: Wednesday, April 13, 2016 8:57 AM
To: Discover The Fraud <discoverthefraud@gmail.com>
Subject: RE: Chyba v. Bayview Loan Servicing hearing continuance

Pamela:

I wanted to meet and confer with you regarding a few matters, but have not heard back from you as to your availability for a quick phone call. I have a court hearing at 11:00 a.m., which I will need to leave by 10:00 for, so was hoping to talk to you this morning before 10:00.

1) I asked you for dates for your deposition, but did not receive a response. Thus, my office noticed the deposition for 4/22/16. Does that date work for you, and if not, I am agreeable to work around your schedule. We could do the deposition via videoconference if you are out of the state; or set a time that you will be in CA for the deposition provided that you agree that the deposition may proceed after the discovery cut-off.

2) The MSC is on calendar for 4/27. Does that date work for you? Previously when we were discussing MSJ hearing dates (when the MSJs were initially filed), I believe you indicated that 4/27 did not work. Thus, I wanted to meet and confer with you sooner than later so we can request a continuance, as needed. I previously informed my client that 4/27 did not work for you, so I'm not certain if that date will still work for them. Please advise of your availability for the MSC.

3) As indicated, I am out of the office next week for expert depositions in N.C, so I am not available on 4/18 for the MSJ hearing. However, I am not inclined to continue it until the end of May as it could moot some of these other matters. Let me know your thoughts on scheduling/etc.

I look forward to your response.

Thank you kindly,

Cathy

From: Cathy Knecht [mailto:cathy.knecht@sbgk.com]
Sent: Tuesday, April 12, 2016 5:49 PM
To: Discover The Fraud <discoverthefraud@gmail.com>
Subject: Re: Chyba v. Bayview Loan Servicing hearing continuance

I'm out of the office for a MSC, so have not been able to communicate much today. I'm in the office tomorrow morning. Are you available for a phone call in the morning to go over these issues?

Sent from my iPhone

On Apr 12, 2016, at 1:49 PM, Discover The Fraud <discoverthefraud@gmail.com> wrote:

I am out of town for work during those weeks, therefore it's not the days that are the issue it's the whole week I'm gone. I stated that in the pleadings prior, I cannot take two days for traveling to a hearing when it is not necessary.

Therefore, the dates have not changed -- any days during those weeks I mentioned are ok for a continuance.

On Tue, Apr 12, 2016 at 11:12 AM, Cathy Knecht <cathy.knecht@sbgk.com> wrote:

Also - does any day/time work for you during those weeks?

Sent from my iPhone

On Apr 12, 2016, at 1:09 PM, Cathy Knecht <cathy.knecht@sbgk.com> wrote:

I inquired as to whether you had any dates prior to the end of May, other than May 2, that worked for you. You have not responded, until your email below. Are you contending that no other dates work for you until May 23 for the msj?

Sent from my iPhone

On Apr 12, 2016, at 12:41 PM, Discover The Fraud <discoverthefraud@gmail.com> wrote:

Cathy,

I have provided you with the dates of my availability on several occasions prior. I am open to rescheduling for one of the many dates I have provided, otherwise I will be prepared for the hearing this Monday.

Best regards,

Pamela

On Fri, Apr 8, 2016 at 8:49 AM, Cathy Knecht
<cathy.knecht@sbgk.com> wrote:

I have not heard back from you regarding the continuance of the hearing on the MSJ, or your availability for deposition. Please advise.

Thank you,

Cathy

From: Cathy Knecht
[mailto:cathy.knecht@sbgk.com]
Sent: Wednesday, April 6, 2016 9:16 AM
To: Discover The Fraud
<discoverthefraud@gmail.com>
Subject: RE: Chyba v. Bayview Loan Servicing

Good morning Pamela:

Do you think the judge will want to go out that far? Would the morning of 4/12 work for you, if the court does not want to kick it out until May?

Also, what is your availability for your deposition prior to 4/22?

From: Discover The Fraud
[mailto:discoverthefraud@gmail.com]
Sent: Tuesday, April 5, 2016 6:11 PM
To: Cathy Robinson <cathy.robinson@sbgk.com>
Subject: Re: Chyba v. Bayview Loan Servicing

Cathy,

May 9th week will not work. May 23, May 30 or June 6 week afternoon hearing.

Pamela

On Tue, Apr 5, 2016 at 2:07 PM, Cathy Knecht
<cathy.knecht@sbgk.com> wrote:

The week of May 2 does not work for me. Would the week of May 9th work for you? If we did it on the 9th, I would need it to be in the afternoon as I have another hearing that morning. My assistant called the clerk, and the clerk stated that we are not limited to Mondays for the hearing, but suggested that we provide at least 2 different days that the parties are available/have agreed on so in case the court is not available on one day, they can check on the other date(s) we provide. She also said that hearings are typically at 10:30 a.m., but we can request whatever time that works for us both on the stipulation.

Thus, I propose 5/9 at 2:00 p.m., or 5/10 at 10:30 a.m. Would those days/times work for you?

From: discoverthefraud@gmail.com
[mailto:discoverthefraud@gmail.com]
Sent: Tuesday, April 5, 2016 2:04 PM
To: Cathy Robinson
<cathy.robinson@sbgk.com>
Subject: Re: Chyba v. Bayview Loan Servicing

Yes I will be out of town and need more time as well therefore I will stipulate to another date that works for both of us. Let me know what dates you are avail. May 2 is good for me
Best regards
Pamela

From: Cathy Knecht
<cathy.knecht@sbgk.com>

Date: Tue, 5 Apr 2016 11:58:08 -0700 (PDT)

To: <discoverthefraud@gmail.com>

ReplyTo: "Cathy Robinson"
<cathy.robinson@sbgk.com>

Subject: Chyba v. Bayview Loan Servicing

Pamela:

I am in receipt of notice that the Court has set a hearing on the MSJ filings for 4/18/16. That day does not work for me, as I will be in Charlotte, NC for expert depositions in another matter. Thus, would you agree to a stipulation to continue the hearing on the MSJ to another mutually agreeable date?

Please advise,

Thank you - Cathy

Cathy A. Knecht, Esq.

E-Mail: Cathy.Knecht@sbgk.com

Of Counsel

Barry, Gardner & Kincannon

A Professional Corporation

Orange County Office San Diego
County Office

===== =====
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Tel: (949) 851-9111 Tel: (760)
754-9111

Fax: (949) 851-3935 Fax: (760)
754-3935

Confidentiality Note: IRS Circular 230 Disclosure: To ensure

compliance with requirements imposed by the IRS, we inform you
that

any U.S. federal tax advice contained in this communication

(including any attachment) is not intended or written to be used,

and cannot be used, for the purpose of (i) avoiding penalties
under

the Internal Revenue Code or (ii) promoting, marketing or
recommending

to another party any transaction or matter addressed herein.

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Please immediately notify us by return e-mail and delete it. If this

e-mail contains a forwarded e-mail or is a reply to a prior e-mail,
the

contents may not have been produced by the sender and
therefore we are

not responsible for its contents.

This notice is automatically appended to each e-mail. It is the recipient's responsibility to take measures to ensure that this e-mail is virus free, and no responsibility is accepted by Barry, Gardner & Kincannon, APC, for any loss or damage arising in any way from its use.

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EXHIBIT B

[REDACTED]

From: Cathy Knecht [mailto:cathy.knecht@sbgk.com]
Sent: Friday, May 20, 2016 1:44 PM
To: Pamela Chyba <discoverthefraud@gmail.com>
Subject: RE: Chyba v BLS

Pamela:

There is no requirement in federal court that you must be given more than six business days notice of a deposition, and in fact you were given 13 days notice. Pursuant to Federal Rule 30(b)(1), all that is required is "reasonable notice". Furthermore, the most important consideration is whether the notice is reasonable under the circumstances of the case. As you know, the Court issued a short time frame to conduct additional discovery in relation to the MSJ. Thus, 13 days notice of the deposition was reasonable under the circumstances. Furthermore, my office served the notice on 5/10, and there is no reason why you waited until 5/18 to state that you would not be appearing at your deposition.

As you know, I previously requested your dates of availability for deposition, and having not received a response from you, initially noticed your deposition for April 22, 2016, which you also failed to appear at. I asked you for alternative dates for your deposition, agreed to take your deposition via video conferencing if that worked better for your schedule, and tried to accommodate you/your schedule – and you simply chose to ignore those requests.

Based on your email below, it is noted that you will not be appearing on Monday, May 23, 2016 for your deposition, and I will cancel the court reporter to avoid further unnecessary expenses to my client.

Thank you,
CKR

From: Pamela Chyba [mailto:discoverthefraud@gmail.com]
Sent: Wednesday, May 18, 2016 12:42 PM
To: Cathy Robinson <cathy.robinson@sbgk.com>
Subject: Re: Chyba v BLS

Cathy,

As you are aware from the first time, 6 business days notice is not reasonable or sufficient time to request a deposition for plaintiff, therefore I will not be attending your deposition on Monday May 23. If you provide reasonable notice - I have no problem to provide a deposition. If you would like to file a joint stipulation for an extension of the limited discovery, I am open to do so.

Best Regards,
Pamela

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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2214 Faraday Avenue, Carlsbad, California, 92008.

The foregoing document described as DECLARATION OF CATHY KNECHT ROBINSON IN SUPPORT OF DEFENDANTS BAYVIEW LOAN SERVICING, LLC AND MARILYN CORO'S MOTION FOR SANCTIONS PURSUANT TO F.R.C.P 37(d) will be served on the interested parties in this action as follows:

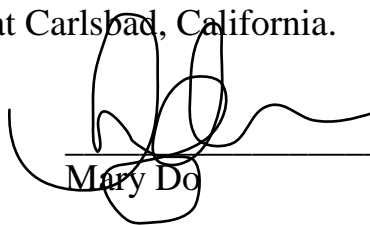
I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – The foregoing document will be served by the court via NEF and hyperlink to the document. As of June 6, 2016, the following are those that are currently on the list to receive e-mail notices for this case:

Pamela Chyba
discoverthefraud@gmail.com

Jeffrey B Gardner
Jeff.Gardner@sbgk.com,mary.do@sbgk.com

[X] (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 6, 2016, at Carlsbad, California.



Mary Do